

GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)
October 17, 2005
9:00 A.M.
1738 East Elm
Bennett Springs Conference Room
Jefferson City, MO 65101

COMMISSIONERS PRESENT

Patrick Gleason, Chairman
Tim Warren, Vice-Chairman
Ben Kessler
Susan Williamson
Norella Huggins
Derrick Standley
Paul Schmidt

CALL TO ORDER

Patrick Gleason, HWMC Chairman, called the General Session to order at 9:00 A.M.

EXECUTIVE SESSION

An Executive Session was not held since there were no Executive Session agenda items.

APPROVAL OF MINUTES

Motion was made by Commissioner Kessler and seconded by Commissioner Schmidt to approve the August 11, 2005, General Session Minutes as corrected.

The roll call vote was as follows:

Patrick Gleason, Chairman	YES
Tim Warren, Vice-Chairman	YES
Ben Kessler	YES
Susan Williamson	YES
Norella Huggins	YES
Derrick Standley	YES
Paul Schmidt	YES

Motion carried.

REQUEST FOR REFERRAL OF COMPLIANCE AND ENFORCEMENT CASES (LISTED BELOW) TO THE ATTORNEY GENERAL'S OFFICE (AGO) IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Dan Massey, AGO, gave a brief history of the August 11, 2005, meeting, at which a request was made for a referral to the AGO of approximately 41 gas stations and UST facilities for operating, or believed to be operating, without the required Financial Responsibility (FR) mechanism. At that time, the AGO had entered into settlement agreements with several facilities providing payment of \$1000 civil penalties and a time table for obtaining the FR mechanism. Copies of several of these settlement agreements are included in the packet.

Six facilities that entered into settlement agreements have failed to obtain the FR in a timely manner. Most agreed to obtain the FR by the end of August. Only one facility has a current application on file. Several others submitted applications, but have been returned as incomplete or required further information, and none was provided.

The AGO is requesting referral for failure to obtain the FR mechanism. Commissioner Kessler asked about the party responsible for obtaining the FR mechanism, whether it is the lessee or owner of the property. Dan Massey responded that both are equally responsible. The AGO's concern is not who holds the FR mechanism, only that one is in place. An agreement needs to be in place regarding who maintains insurance, who does the testing, who cleans up a spill, etc. Commissioner Kessler followed by asking who keeps track of whether it is enforced. Dan Massey responded that the PSTIF and DNR database give the AGO that information. Commissioner Kessler asked if the owner of the property was primarily responsible. Dan Massey responded that the UST Law reads "owner or operator." Commissioner Kessler stated he would like to see the law changed to strictly owner and asked whether it was possible to do so. Dan Massey responded that that would take a change in the statute. He elaborated on the difficulty for owners to submit applications. Commissioner Standley suggested that facilities not be allowed to operate unless FR was in place, similar to what occurs in the Solid Waste Management Program (SWMP). Commissioner Standley also asked whether it was an administrative function and how the department deals with it? Robert Geller, HWP Program Director, responded that it is an administrative function, but gives flexibility to the owner/operator. It helps the state ensure we have one or the other as a responsible party. Shelley Woods, AGO, offered clarification on the SWMP permitting function.

Brad Luebbering, Luebbering Oil Co., presented a brief history of the actions taken thus far to obtain FR from PSTIF. Commissioner Warren asked for documentation about purchasing equipment. Mr. Luebbering provided the proof of purchase for equipment and noted that Luebbering Oil has two other sites in the PSTIF. Dan Massey noted that a letter had been sent to Luebbering Oil eight months prior and they entered into an agreement four months prior promising to obtain FR within 60 days. Luebbering Oil failed to do that. Mr. Massey has not spoken to anyone from Luebbering Oil, indicating a breach of contract has occurred. Luebbering Oil made contact with Marsha Hopp, PSTIF. Commissioner Warren asked about assumptions made regarding contact with PSTIF versus the AGO. Tammy Bell, Office Manager for Luebbering Oil Co., confirmed submitting the application with PSTIF, indicating she did not know they needed to contact AGO while working with PSTIF.

Chairman Gleason commented regarding agreements made in May with AGO, not PSTIF, to have FR within 60 days and asked the reason they ignored the agreement? Mr. Luebbering replied that the agreement wasn't ignored, there were discrepancies in the method used to make the line detectors pass. Second attempt to PSTIF was not accepted. Bigger line-leak detectors

were found that would pass. Chairman Gleason reiterated his question about why no contact was made to the AGO. Mr. Luebbering stated that he thought contact with PSTIF would suffice and that it takes time to figure out what information or application will pass and what won't.

Commissioner Huggins asked if Mr. Luebbering had been represented by legal counsel. Mr. Luebbering's response was "no." Commissioner Huggins stated there seemed to be a good faith effort made to comply and there's no reason to be harsh to someone that's trying to do the right thing. Commissioner Warren agreed with that point.

Dan Massey asked if Luebbering Oil had an application on file. Ms. Bell stated that their application had been rejected and their money was returned on September 7, 2005. Mr. Massey asked why it was returned. Ms. Bell stated the line-leak detectors were not there. Mr. Massey asked about repeated requests by PSTIF to complete the effort. Luebbering Oil indicated they had to find someone to make these unique line-leak detectors. Mr. Luebbering stated they were not trying to ignore the AGO. They wanted to find the right detectors so that their application would pass. Regulations change quickly. They have tried for three years to get this up and going and they had no intentions of avoiding or putting it off, hopefully they are on the right track.

Commissioner Huggins asked about the date for installation. Mr. Luebbering indicated he spoke with Schollmeyer Petroleum and they were planning to begin this week. Commissioner Huggins stated that they can't reapply until installation is complete. Commissioner Huggins asked Dan Massey if a modification could be done to the agreement that would bind them to a certain date to get the work accomplished and get insurance as a reasonable way to proceed. Commissioner Warren asked about a reasonable amount of time for them to reapply to PSTIF. Commissioner Huggins asked Mr. Luebbering how much time they need. Mr. Luebbering stated at least two weeks. Ms. Bell stated that she could submit the application upon their return to the office, and she would get a request for information from PSTIF, and submit a letter to PSTIF that the installation is in progress and that they will notify PSTIF when the installation is complete and submit the test report. Ms. Bell asked the Commission if that is what they would like them to do. Commissioner Kessler asked if the installer was an individual or company. Mr. Luebbering stated it is a company, Schollmeyer Petroleum. Commissioner Kessler asked if they could get a letter of confirmation stating their begin date and completion date. Mr. Luebbering stated he could do that. Ms. Bell asked where to send the letter. Commissioner Warren instructed them to send the correspondence to Dan Massey, AGO.

Chairman Gleason asked for the date of the original application. Ms. Bell stated it was April 6, 2005. Chairman Gleason asked if it was rejected in September. Ms. Bell confirmed. Chairman Gleason asked why it took so long. Carol Eighmey, Executive Director of PSTIF, noted a March date the application was received although the application did not demonstrate that the tanks and piping were in compliance. Thus, a policy could not be written until things were in place. Communications went back and forth about the configurations of the piping and other topics. After several months of non-compliance the application was returned. Commissioner Warren asked about the time frame for PSTIF after installation is completed. Ms. Eighmey stated that it is a matter of a few days after confirmation of installation is received to issue the policy.

Dan Massey asked about the last time Luebbering Oil had been insured. Ms. Eighmey replied that they had never been insured by PSTIF and this is the second or third time they have applied. Mr. Massey asked how long they have had tanks there without being insured. Ms. Eighmey replied – years. Chairman Gleason asked Mr. Massey about his intention to establish history. Mr. Massey wanted to make the state's position clear. His concern is a policy being in place.

Commissioner Standley suggested leaving this matter in the hands of the AGO and letting them complete their tasks.

Commissioner Huggins asked Mr. Massey what actions would be taken if this were referred to the AGO. Mr. Massey stated that the state of Missouri is planning to file the first set (four to a dozen) of lawsuits October 26 or 27, 2005, those that have breached a contract would be at the top of the list. Commissioner Huggins stated that it is a waste of state resources and time to sue someone that is just about to come into compliance. Amnesty given, in effect, in June 2005, fining them \$1000, which they paid to come into compliance. The others who have done nothing and really violated the agreements, she is happy to refer. Commissioner Huggins is not happy to refer Luebbering Oil because they are very close to compliance. Mr. Massey agreed they had received amnesty for 60 days, but it has been three years and they don't have a current application on file. They haven't started on this new project. Mr. Massey believes they are six months from being insured.

Commissioner Warren stated that he was trying to get documentation of how long it would actually take and it didn't appear it would take six months from the discussion and there is a paid invoice for \$4500 to correct the situation. Commissioner Warren agreed that although they have not done due diligence, but they have made a good faith effort. Commissioner Standley asked Mr. Massey if they continue to come into full compliance can the AGO cease the desist action. Mr. Massey agreed. Commissioner Huggins stated that there is no point in filing a lawsuit and making someone obtain counsel if you could easily modify the standing agreement. If they don't come into compliance within a certain timeframe, then you would sue them. Commissioner Huggins reiterated that it's too harsh to sue Luebbering, who has spent a lot of money and finally figured out what to do and they're coming into compliance.

Commissioner Schmidt asked Mr. Massey about the penalty being sought. Mr. Massey replied that it would depend on other issues. Assuming that it is FR only, it would be between the \$4000 to \$5000 range. Some of these facilities have other significant issues that will also be addressed. Commissioner Kessler asked if the minimum is \$4000 to \$5000. Mr. Massey agreed and added that if they went to a hearing it could be substantially more than that.

Motion was made by Commissioner Huggins and seconded by Commissioner Kessler to refer Northtown Beer Stop & Liquor, Cochran Development (d.b.a. Expressways Food Shop #1), Jack's Gas, Jack's Deli & Things II, and Rex West to the AGO in order to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

Motion was made by Commissioner Warren and seconded by Commissioner Kessler to have Luebbering Oil fax a copy of the letter from Schollmeyer Petroleum to Chairman Gleason to show proof of action.

Motion carried.

Motion was made by Commissioner Kessler and seconded by Commissioner Warren to table Luebbering Oil until the next meeting, December 9, allowing them 60 days to get into compliance and obtain insurance or be referred to the AGO.

Commissioner Standley opposed.

Motion carried.

Dan Massey noted that the state of Missouri still has a cause of action against Luebbering Oil for breach of contract.

NOTE: Mr. Pete Katsaliros, Northtown Beer Stop, appeared later in the meeting to notify the Commission that the requested paperwork has been submitted to PSTIF. Commissioner Huggins asked for confirmation of the date the application was rejected due to lack of paperwork.

Mr. Katsaliros agreed and reiterated that the paperwork had been submitted the week prior.

Mr. Geller asked Ms. Eighmey for clarification on the status of the application. Ms. Eighmey noted that the original application had been filed in July 2005, then rejected for lack of information regarding leak detection requirements. Mr. Katsaliros stated that he has submitted the requested information. Chairman Gleason asked about the time lapse between the original application and re-application after rejection. He noted the agreement with the AGO to have insurance by the end of August. Mr. Katsaliros stated that paperwork was turned in, but until he received the latest letter he did not realize there was paperwork missing. Commissioner Huggins addressed the time lapse between the original application and the rejection from PSTIF. Ms. Eighmey stated that their response is within 30 days or less, but their turn around time is generally 10 days. Their response is a letter indicating what additional documents are needed to make the application complete and adequately demonstrate compliance. After weeks or months, the application and money are returned. Mr. Katsaliros acknowledged that he had been on vacation, which most likely caused the delay, they were not ignoring the request.

Commissioner Huggins noted that the Commission had already taken action to refer Northtown Beer Stop to the AGO. She also stated that the attorney was present and if the proper paperwork has been submitted and a quick turn around from PSTIF, Mr. Massey will not file the suit. However, further glitches or rejection may result in the AGO filing. Mr. Katsaliros said the policy was to be issued today. Mr. Massey agreed that if FR is the only issue, that would take care of the violations. The only other issue would be additional civil penalties and a lawsuit would not have to be filed. Chairman Gleason added that the motion only refers them to the AGO. It is the way of enforcement in Missouri and we want to protect the environment.

REQUEST TO REFER CAR MAC'S SHELL (ST0021337) AND DAMON PURSELL CONSTRUCTION COMPANY (ST0004202) TO THE AGO IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Angela Oravetz, HWP Compliance & Enforcement, informed the Commission that on October 10, 2005, Car Mac's Shell (ST0021337) received a policy from PSTIF, thus no need to refer to the AGO. Ms. Oravetz noted that Damon Purcell Construction Company has an application completed, but they do not have a policy currently in from the PSTIF. Ms. Oravetz is asking for a referral to the AGO.

Motion was made by Commissioner Warren and seconded by Commissioner Williamson to refer Damon Purcell Construction Company (ST0004202) to the AGO in order to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

Motion was made by Commissioner Standley and seconded by Commissioner Huggins to not refer Car Mac's Shell (ST0021337) to the AGO in order to compel compliance and pursue or negotiate a civil penalty.

Motion carried.

UPDATE – GAS AND MORE, INCORPORATED (ST0021264), (ORIGINALLY BROUGHT BEFORE THE COMMISSION AT THE AUGUST 11, 2005, MEETING)

Angela Oravetz, HWP Compliance & Enforcement, provided brief history, updated information, and answered questions on Gas and More, Inc. Ms. Lisa Ernst, Gas and More, Inc., confirmed that she had the pictures as requested. Ms. Oravetz stated that the settlement agreement still needed to be signed and returned to the AGO.

UPDATE – MIDWEST OIL REFINING COMPANY, VARIANCE PETITION RECOMMENDATION

David Giarratano, HWP Compliance and Enforcement, provided a brief history, updated information, and answered questions regarding Midwest Oil Refining Company. No comments received from the public.

Ms. Julie Lamborn-Gettinger, Midwest Oil, presented the Commission with the results of a survey she had conducted regarding the effect of Senate Bill 577 on 21 Small Business Hazardous Waste Transporters. Ms. Lamborn-Gettinger informed the Commission that the survey was conducted through letters she had written and follow-up phone calls. She pointed out that of the 21 letters sent, only three had been received back as “return to sender”, eight did not respond at all and five of the nine transporters who did respond shared the opinion that Senate Bill 577 had had an adverse impact upon their businesses.

Shelley Woods, AGO, pointed out to the Commission that this was not a new variance request but a “renewal” of the Variance that had been granted.

Commissioner Standley reminded the Commission that the adverse impact issue raised by this Variance request had been previously discussed and it was agreed that this was a legislative issue and not something the Commission could change. There was a brief discussion that followed among the Commissioners comparing what roles the Commission and the legislation played regarding this issue and what advantages and disadvantages the fees related to Senate Bill 577 had on transporters.

Commissioner Warren said he supported granting the variance renewal at this time, but pointed out that while he felt the Commission sympathized with Midwest Oil’s situation, he did not see it to be the role of the Commission to continue to renew the Variance on an ongoing basis. He encouraged Midwest Oil to pursue contact with the Legislature for the necessary steps they felt needed to be taken to bring this to a resolution. Ms. Lamborn-Gettinger informed the Commission that she had approached the Legislature first and had been referred by them to the HWMC. Chairman Gleason told Ms. Lamborn-Gettinger that the HWMC has the power to make a decision regarding the Variance, but not to change the law. Ms. Lamborn-Gettinger said she understood and intends to contact her legislative representatives again.

Commissioner Schmidt said he would have to vote “no” to the Variance renewal, pointing out the frequency of the transportation of hazardous waste and the possible exposure to Missouri as being the determining factors as to why the fee is as high as it is and why it should be paid.

Commissioner Huggins agreed with Commissioner Warren that the Commission should not continue to renew the Variance on an ongoing basis, suggesting that Midwest Oil either bear the cost of the fee increase or participate in the promotion of a legislative change. She said she was in favor of granting the renewal at this time, because of Midwest's service of the reuse and recycling of used oil.

Commissioner Standley said he was not in favor of renewing the variance due to the fact that there was no letter from the sponsor of this legislation explaining his/her intention regarding the tax increase and asked if Ms. Lamborn-Gettinger if she had contacted or heard from any legislative representatives regarding the matter. Commissioner Schmidt pointed out that the Commission could not draw conclusions base upon intentions. Commissioner Standley agreed saying that they had to go by the law.

Ms. Lamborn-Gettinger asked if the Commission contacted the legislation regarding the matter. The Commission told her it had not. Chairman Gleason said that it is the responsibility of the person who has been adversely affected. Ms. Lamborn-Gettinger said she did not know she was to contact the legislation.

Motion to renew the Midwest Oil's Variance was made by Commissioner Huggins and seconded by Commissioner Kessler.

Motion carried. (Commissioner Standley and Commissioner Schmidt opposed.)

GENERATOR REGISTRATION RENEWAL FEES

John Beard, HWP Budget and Planning, gave a brief history, updated information, and answered questions from the Commissioners. He stated that letters had been sent to some key legislative staff and currently has not received responses from them. Therefore, Mr. Beard is withdrawing this item from the agenda.

Mr. Beard continued to say that Mr. Doyle Childers, MDNR Director, will be making further contacts with legislators. A telephone conference call may be necessary in the near future to finalize this.

Chairman Gleason asked about the timeline and when the new fees go into effect. Mr. Beard stated that the billing for the FY05 reporting will be sent in about 30 days.

Commissioner Warren asked how many small businesses are impacted by this increase. Mr. Beard stated about 1200 generators (those that pay less than \$150 per year), but 2400 total.

Commissioner Standley agreed that the lack of response from the legislators makes it more complicated and thus nothing can be done at this time. Chairman Gleason agreed. Mr. Beard stated that if no response is received the new fee will be included in the billing. Chairman Gleason noted that if a recommendation is needed in the next 30 days a teleconference would be the most economical way to handle this issue.

(Commissioner Williamson asked for clarification on the variance for Midwest Oil and the recommendation to Ms. Lamborn-Gettinger to go to the legislation. Chairman Gleason clarified that the motion was to approve the variance and the recommendation was that the variance may not be approved another year without legislation.)

(Robbin Stout, Commission Secretary, asked for clarification that Commissioner Huggins made the motion on the Midwest Oil variance request and Commissioner Kessler seconded the motion. Chairman Gleason agreed.)

(Robert Geller, introduced Ms. Andrea Kliethermes as the Interim Tanks Section Chief, filling in for John Balkenbush, who transferred to the Division of State Parks. He wanted to recognize the excellent job John did in the Tanks Section and his efforts along with the continual challenge in staffing, etc.)

UPDATE – TANKS SECTION

Andrea Kliethermes, Interim Tanks Section Chief, gave a brief update on the staffing situation. She noted that the Risk-Based Corrective Action effort is on hold due to staffing issues. She also stated that 27 no-further-action letters had been issued.

Commissioner Huggins asked about the article in the “Post” on October 10, titled, “EPA Fills Gap in Inspections of Underground Fuel Tanks.” She asked Robert Geller, HWP Director, to address the status of this issue. Mr. Geller explained that the inspections had been completed out of the Regional Offices. Funding and the positions for inspections were removed in the Governor’s budget. Some of the funding was however retained to continue work on closure/remediation activities in the Tanks Section. The HWP has been working with the Director’s Office, Governor’s Office, and PSTIF to develop contract inspections to reduce the number of EPA inspections.

Kathy Flippin noted that there have been meetings with PSTIF and the Office of Administration to amend the contract and coordinate the needs of the inspections that will satisfy EPA. The EPA continues to do inspections. The EPA has not given HWP the summary of the inspections, but has pointed out there are problems at tank sites that warrant the state stepping back in doing inspections. Commissioner Warren asked about the EPA required one third of all tanks be inspected annually. Ms. Flippin replied that EPA’s guidance expressed a state with authorization that is a good number to try to get – not a requirement. That number has been incorporated into the state’s program authorization application. Commissioner Warren asked how long EPA is doing temporary inspections. Ms. Flippin responded that EPA is there as long as needed.

Carol Eighmey requested time on the next HWMC meeting agenda to present further information from PSTIF. Chairman Gleason agreed to add the presentation to the December 9, 2005, agenda.

RULEMAKING UPDATE

Tim Eiken, HWP Rule Coordinator, provided a brief history and answered questions from the Commissioners regarding pending rulemakings, including the following information:

- Incorporation by reference of changes to CFR 40, Chapters 260 – 265, between July 1, 2000, and July 1, 2004. These will be filed soon and should be published in the Missouri Register in December. That would put us on schedule for a public hearing in late January or early February and an effective date of September or October 2005.
- Changes to the state Universal Waste rule. This includes changes to clean up the adoption of the federal listing of fluorescent lamps, and also the adoption of the changes to add electronic

wastes to the state Universal Waste Rule. These will not be ready to file for a few months as we work on drafting the rule language. Depending on when they are filed, they should be effective sometime towards the end of 2006.

- Changes necessary to adopt the federal Uniform Manifest rule. This rule implements a standard manifest form for use by all 50 states and eliminates or minimizes any state specific information on the manifest. These will not be ready to file for a few months as we work on drafting the rule language. Depending on when they are filed, they should be effective sometime towards the end of 2006.

In addition, we have one authorization application currently being reviewed by EPA, Region VII. Once EPA approves that application we will be authorized for most of the July 1, 2000, Code of Federal Regulations. Once the rules we are working on have been adopted and are effective, we can submit those to EPA in a future authorization application. Authorization is basically the state requesting EPA's concurrence that it has adopted the federal regulations and that they are equivalent to the federal regulations.

Commissioner Huggins asked about the plans to keep these current. Mr. Eiken suggested to re-evaluate these on an annual basis, adopt the regulations as they come out annually. Mr. Geller noted that significant rule changes or impacts to industry, adoption will take some time to work with stakeholders.

MONTHLY REPORTS

Robert Geller, HWP Director, gave a brief description of the packet contents. He offered to provide a one-page summary of key highlights, if that would be beneficial to the Commission. No questions or comments were made at this time.

PUBLIC INQUIRIES OR ISSUES

Kevin Perry, president of REGFORM, encouraged the Commissioners to continue to shepherd through the current rulemakings. Mr. Perry gave a brief discussion of the importance of these rulemakings and their effects in Missouri. He is encouraged with the proposed January 1, 2006, hearing date.

Mr. Perry also encouraged the Commission to show restraint when referring facilities to the AGO and apply it appropriately.

Mr. Perry also announced his resignation from REGFORM and will be going to the Forrester Group out of Springfield, MO, with an office in Jefferson City.

OTHER BUSINESS

Robert Geller, HWP Director, asked the Commission to adopt the meeting minutes from the Conference Call meeting held September 30, 2005.

Mr. Geller also asked the Commissioners to complete the Commissioner Information Form to be used in the Commissioner Book.

Mr. Geller brought attention to the Preventing Missouri's Natural Resources packet. These summaries of news releases are available online and provided in the Commission Packets. He asked the Commissioners if they would be interested in receiving news clips. Commissioner Kessler and Commissioner Williamson asked that they receive the news clips via regular mail and the other Commissioners asked for them via e-mail.

Motion was made by Commissioner Huggins and seconded by Commissioner Standley to approve the September 30, 2005, conference call minutes.

Motion carried.

Chairman Gleason asked for comments from Commissioner Standley and Commissioner Huggins regarding the Commissioner Training held October 5, 2005. Commissioner Huggins noted that it was a useful day and the training was video taped. The other Commissioners will receive a DVD copy. There is useful information in the training. Commissioner Standley agreed that it had been very well done. Commissioner Huggins also noted that she would request invitations be sent six weeks ahead versus 10 days notice next year. Commissioner Huggins added that Kurt Schaeffer, Deputy Director of General Counsel, promised to convey to those Commissions that haven't yet passed a procedural rule a copy of the Air Commission's rule, which is a model uniformed rule for what is done after the recommendation of the Administrative Hearing Commission. We all need to pass that to implement HB824.

FUTURE MEETINGS

Chairman Gleason noted that the next meeting is scheduled for Friday, December 9, 2005, in Jefferson City.

ADJOURNMENT

Motion to adjourn was made by Commissioner Huggins and seconded by Commissioner Williamson.

Motion carried and the meeting was adjourned.

Respectfully Submitted,

Judith Clark
Interim Commission Secretary

APPROVED

Patrick Gleason-Chairman

Date